



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

directing verdict for plaintiff on a finding of negligence of defendant, is erroneous in ignoring contributory negligence, relied on as a defense, there being evidence of it and of its continuance up to the accident.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 613-623; Dec. Dig. § 253.* 7 Va.-W. Va. Enc. Dig. 715.]

2. Trial (§ 296*)—Instructions—Cure by Other Instructions.—The defect of an instruction in directing verdict for plaintiff on a finding of negligence, ignoring the defense of contributory negligence, is not cured by other instructions as to contributory negligence; it being a case of contradictory instructions.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 705-713, 715, 716, 718; Dec. Dig. § 296.* 7 Va.-W. Va. Enc. Dig. 744.]

3. Appeal and Error (§ 1122*)—Reversal for Instructions—Considering Weight of Evidence.—On reversal for error in instructions, expression of opinion on the weight of evidence will be withheld, where it is conflicting and there must be a new trial.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4420; Dec. Dig. § 1122.* 1 Va.-W. Va. Enc. Dig. 600.]

Error to Circuit Court, Wise County.

Two actions, one by D. H. Skinner, the other by Charles Harris, both against the Virginia & Southwestern Railway Company. Judgments for plaintiffs, and defendant brings error. Reversed, and remanded for new trial.

Powell, Price & Shelton, of Bristol, and *Bullitt & Chalkley*, of Big Stone Gap, for plaintiff in error.

Vicars & Peery, of Wise, and *Morton & Parker*, of Appalachia, for defendants in error.

WITT v. CREASEY.

Sept. 9, 1915.

[86 S. E. 128.]

1. Easements (§ 5*)—Right of Way—Prescription.—To establish a private way by prescription over the land of another, the use and enjoyment thereof by claimant must have been adverse, under a claim of right and exclusive, continuous, uninterrupted, and with the knowledge and acquiescence of the owner of the land, for at least 20 years.

[Ed. Note.—For other cases, see Easements, Cent. Dig. §§ 13, 20-22, 26; Dec. Dig. § 5.* 11 Va.-W. Va. Enc. Dig. 310.]

2. Witnesses (§ 138*)—Competency—Transaction with Decedent.—In an action to establish a private way by prescription, a former

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

owner of the land, not a party to the suit nor interested in the result, was a competent witness to testify that the right of way as enjoyed by plaintiff originated in a permission given by the owner of the servient estate to such former owner, though such owner of the servient estate was dead.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 574, 575; Dec. Dig. § 138.* 13 Va.-W. Va. Enc. Dig. 905.]

3. Witnesses (§ 176*)—Competency—Former Owner of Land.—Where plaintiff, suing to establish a private right of way by prescription, testified that its use by him and his predecessor in title had never been subject to any leave or license, a former owner of the land was competent to testify that the right of way as enjoyed by plaintiff originated in a permission obtained by him from the owner of the servient estate, then deceased, under Code 1904, § 3346, subsec. 2, because plaintiff had already testified at length in his own behalf as to such matter.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 714, 716, 717, 719; Dec. Dig. § 176.* 13 Va.-W. Va. Enc. Dig. 905.]

4. Easements (§ 8*)—Prescription.—An easement will not arise by prescription simply from permission of the owner of the servient estate, no matter how long the permissible use continues; and where the use was begun by permission, it will continue to be regarded as permissive, in the absence of some decisive act of the owner of the dominant estate, indicating an adverse and hostile claim, especially when the use of the easement by the claimant is in common with its use by others.

[Ed. Note.—For other cases, see Easements, Cent. Dig. §§ 23, 24, 27-33; Dec. Dig. § 8.* 4 Va.-W. Va. Enc. Dig. 862.]

5. Easements (§ 36*)—Right of Way—Prescriptive Right.—Where a private road was used more by plaintiff, claiming to have acquired a right of way by prescription, than by third persons, but there was more or less use of the road by any one desiring to use it, and the user indicated that the road was enjoyed by the neighborhood generally under an implied license, the use negated any presumption in favor of plaintiff.

[Ed. Note.—For other cases, see Easements, Cent. Dig. §§ 77, 78, 88-93; Dec. Dig. § 36.* 4 Va.-W. Va. Enc. Dig. 862.]

6. Easements (§ 36*)—Private Roads—Establishment.—A party seeking to establish a private road by prescription over the land of another, has the burden of establishing his claim.

[Ed. Note.—For other cases, see Easements, Cent. Dig. §§ 77, 78, 88-93; Dec. Dig. § 36.* 4 Va.-W. Va. Enc. Dig. 862.]

7. Appeal and Error (§ 901*)—Presumptions—Burden of Proof.—Appellant has the burden of overcoming the presumption in favor of

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the correctness of the decree appealed from, and to satisfy the court on appeal that there was error to his prejudice.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 1771, 3670; Dec. Dig. § 901.* 1 Va.-W. Va. Enc. Dig. 609.]

Appeal from Circuit Court, Bedford County.

Suit by John A. Witt against W. I. Creasey. From a decree for defendant, complainant appeals. Affirmed.

William Eubank, of Bedford City, for appellant.

Landon Lowry, of Bedford City, for appellee.

WOOD et al. v. PHILLIPS.

Sept. 9, 1915.

[86 S. E. 101.]

1. Ejectment (§ 106*)—Right of Action—Title from Common Source.—In ejectment where the burden was upon plaintiff claiming under a common source of title to show that the land claimed was within the description of his title papers, his demurrer to defendant's evidence was properly overruled, where reasonable men might differ as to whether the land was included within such description.

[Ed. Note.—For other cases, see Ejectment, Cent. Dig. §§ 307-310; Dec. Dig. § 106.* 4 Va.-W. Va. Enc. Dig. 882.]

2. Trial (§ 156*)—Demurrer to Evidence—Effect.—A demurrer to the evidence admits the truth of the evidence of the adverse party and all just inferences therefrom, and waives all the evidence of the demurring party in conflict therewith and all inferences not necessarily resulting therefrom.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 354-356; Dec. Dig. § 156.* 4 Va.-W. Va. Enc. Dig. 522.]

3. Appeal and Error (§ 1052*)—Review—Harmless Error.—The general rule that improper admission of evidence is reversible error is subject to the exception that if there is a demurrer to the evidence, and there is enough evidence to sustain a judgment for the demurree without regard to the illegal evidence, the demurring party cannot avail himself of such error.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4171-4177; Dec. Dig. § 1052.* 4 Va.-W. Va. Enc. Dig. 542.]

Error to Circuit Court, Floyd County.

Action by Edward D. Wood and others against James R. Phillips, in ejectment. Judgment for defendant, and plaintiffs bring error. Affirmed.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.